

MT LEGISLATIVE HISTORY

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Chapter 657 1989

Bill H 621 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Pub. Health

Hearing Date(s) _____ C

Hearing Date(s) _____ C

2/15 ☒ C

3/20 ☒ C

_____ C

_____ C

_____ C

_____ C

Date Out 2/17 ☒ C

3/20 ☒ C

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

HOUSE BILL NO. 621

INTRODUCED BY T. NELSON

IN THE HOUSE

FEBRUARY 9, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 18, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	PRINTING REPORT.
FEBRUARY 20, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 21, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 99; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY.
	FIRST READING.
MARCH 27, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1989	SECOND READING, CONCURRED IN.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1989	RECEIVED FROM SENATE.
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SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 1, 1989

ON MOTION, TAKEN FROM THIRD READING
AND REREFERRED TO SECOND READING FOR
FURTHER CONSIDERATION.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 4, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 11, 1989

CONFERENCE COMMITTEE REPORTED.

APRIL 13, 1989

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 14, 1989

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 14, 1989

CONFERENCE COMMITTEE REPORT
ADOPTED.

IN THE HOUSE

APRIL 20, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 ~~HOUSE~~ BILL NO. 621
 2 INTRODUCED BY Sam Nelson
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM
 5 HEALTH CARE INFORMATION ACT TO AUTHORIZE A FAMILY MEMBER OF
 6 A DECEASED PATIENT TO EXERCISE THE RIGHTS PROVIDED FOR UNDER
 7 THE ACT; TO CLARIFY THE RECORDS THAT MUST BE KEPT OF PERSONS
 8 EXAMINING HEALTH CARE INFORMATION; TO AUTHORIZE DISCLOSURE
 9 OF HEALTH CARE INFORMATION TO THIRD-PARTY HEALTH CARE
 10 PAYORS; TO INCLUDE INVESTIGATIVE SUBPOENAS UNDER COMPULSORY
 11 PROCESS; TO ALLOW A HEALTH CARE PROVIDER TO DENY ACCESS TO
 12 RECORDS UNDER COMPULSORY PROCESS PENDING JUDICIAL REVIEW; TO
 13 PROHIBIT DISCLOSURE OF HEALTH CARE INFORMATION TO THE
 14 PATIENT IF IT MIGHT REVEAL BIRTH OUT OF WEDLOCK; AND
 15 AMENDING SECTIONS 50-16-522, 50-16-525, 50-16-529,
 16 50-16-535, 50-16-536, AND 50-16-542, MCA."

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.** Section 50-16-522, MCA, is amended to read:

20 "50-16-522. Representative of deceased patient. A
 21 personal representative of a deceased patient may exercise
 22 all of the deceased patient's rights under this part. If
 23 there is no personal representative or upon discharge of the
 24 personal representative, a deceased patient's rights under
 25 this part may be exercised by the surviving spouse, a

1 parent, an adult child, an adult sibling, or any other
 2 persons person who are is authorized by law to act for him."

3 **Section 2.** Section 50-16-525, MCA, is amended to read:

4 "50-16-525. Disclosure by health care provider. (1)
 5 Except as authorized in 50-16-529 and 50-16-530 or as
 6 otherwise specifically provided by law or the Montana Rules
 7 of Civil Procedure, a health care provider, an individual
 8 who assists a health care provider in the delivery of health
 9 care, or an agent or employee of a health care provider may
 10 not disclose health care information about a patient to any
 11 other person without the patient's written authorization. A
 12 disclosure made under a patient's written authorization must
 13 conform to the authorization.

14 (2) A health care provider shall maintain, in
 15 conjunction with a patient's recorded health care
 16 information, a record of each person who has received or
 17 examined, in whole or in part, the recorded health care
 18 information during the preceding 3 years, except for an
 19 ~~agent--or--employee--of--the--health--care--provider--or~~ a person
 20 who has examined the recorded health care information under
 21 50-16-529(1) or (2). The record of disclosure must include
 22 the name, address, and institutional affiliation, if any, of
 23 each person receiving or examining the recorded health care
 24 information, the date of the receipt or examination, and to
 25 the extent practicable a description of the information

1 disclosed."

2 **Section 3.** Section 50-16-529, MCA, is amended to read:

3 **"50-16-529.** Disclosure without patient's authorization
4 based on need to know. A health care provider may disclose
5 health care information about a patient without the
6 patient's authorization, to the extent a recipient needs to
7 know the information, if the disclosure is:

8 (1) to a person who is providing health care to the
9 patient;

10 (2) to any other person who requires health care
11 information for health care education; to provide planning,
12 quality assurance, peer review, or administrative, legal,
13 financial, or actuarial services to the health care
14 provider; or for assisting the health care provider in the
15 delivery of health care; or to a third-party health care
16 payor who requires health care information and if the health
17 care provider reasonably believes that the person will:

18 (a) not use or disclose the health care information for
19 any other purpose; and

20 (b) take appropriate steps to protect the health care
21 information;

22 (3) to any other health care provider who has
23 previously provided health care to the patient, to the
24 extent necessary to provide health care to the patient,
25 unless the patient has instructed the health care provider

1 not to make the disclosure;

2 (4) to immediate family members of the patient or any
3 other individual with whom the patient is known to have a
4 close personal relationship, if made in accordance with the
5 laws of the state and good medical or other professional
6 practice, unless the patient has instructed the health care
7 provider not to make the disclosure;

8 (5) to a health care provider who is the successor in
9 interest to the health care provider maintaining the health
10 care information;

11 (6) for use in a research project that an institutional
12 review board has determined:

13 (a) is of sufficient importance to outweigh the
14 intrusion into the privacy of the patient that would result
15 from the disclosure;

16 (b) is impracticable without the use or disclosure of
17 the health care information in individually identifiable
18 form;

19 (c) contains reasonable safeguards to protect the
20 information from improper disclosure;

21 (d) contains reasonable safeguards to protect against
22 directly or indirectly identifying any patient in any report
23 of the research project; and

24 (e) contains procedures to remove or destroy at the
25 earliest opportunity, consistent with the purposes of the

1 project, information that would enable the patient to be
2 identified, unless an institutional review board authorizes
3 retention of identifying information for purposes of another
4 research project;

5 (7) to a person who obtains information for purposes of
6 an audit, if that person agrees in writing to:

7 (a) remove or destroy, at the earliest opportunity
8 consistent with the purpose of the audit, information that
9 would enable the patient to be identified; and

10 (b) not disclose the information further, except to
11 accomplish the audit or to report unlawful or improper
12 conduct involving fraud in payment for health care by a
13 health care provider or patient or other unlawful conduct by
14 a health care provider; and

15 (8) to an official of a penal or other custodial
16 institution in which the patient is detained."

17 **Section 4.** Section 50-16-535, MCA, is amended to read:

18 "50-16-535. When health care information available by
19 compulsory process. Health care information may not be
20 disclosed by a health care provider pursuant to compulsory
21 legal process or discovery in any judicial, legislative, or
22 administrative proceeding unless:

23 (1) the patient has consented in writing to the release
24 of the health care information in response to compulsory
25 process or a discovery request;

1 (2) the patient has waived the right to claim
2 confidentiality for the health care information sought;

3 (3) the patient is a party to the proceeding and has
4 placed his physical or mental condition in issue;

5 (4) the patient's physical or mental condition is
6 relevant to the execution or witnessing of a will or other
7 document;

8 (5) the physical or mental condition of a deceased
9 patient is placed in issue by any person claiming or
10 defending through or as a beneficiary of the patient;

11 (6) a patient's health care information is to be used
12 in the patient's commitment proceeding;

13 (7) the health care information is for use in any law
14 enforcement proceeding or investigation in which a health
15 care provider is the subject or a party, except that health
16 care information so obtained may not be used in any
17 proceeding against the patient unless the matter relates to
18 payment for his health care or unless authorized under
19 subsection (9);

20 (8) the health care information is relevant to a
21 proceeding brought under 50-16-551 through 50-16-553; or

22 (9) a court has determined that particular health care
23 information is subject to compulsory legal process or
24 discovery because the party seeking the information has
25 demonstrated that there is a compelling state interest that

1 outweighs the patient's privacy interest; or

2 (10) the health care information is requested pursuant
3 to an investigative subpoena issued under 46-4-301."

4 **Section 5.** Section 50-16-536, MCA, is amended to read:

5 "50-16-536. Method of compulsory process. (1) Unless
6 the court for good cause shown determines that the
7 notification should be waived or modified, if health care
8 information is sought under 50-16-535(2), (4), or (5) or in
9 a civil proceeding or investigation under 50-16-535(9) or
10 (10), the person seeking discovery or compulsory process
11 shall mail a notice by first-class mail to the patient or
12 the patient's attorney of record of the compulsory process
13 or discovery request at least 10 days before presenting the
14 certificate required under subsection (2) to the health care
15 provider.

16 (2) Service of compulsory process or discovery requests
17 upon a health care provider must be accompanied by a written
18 certification, signed by the person seeking to obtain health
19 care information or his authorized representative,
20 identifying at least one subsection of 50-16-535 under which
21 compulsory process or discovery is being sought. The
22 certification must also state, in the case of information
23 sought under 50-16-535(2), (4), or (5) or in a civil
24 proceeding or investigation under 50-16-535(9) or (10), that
25 the requirements of subsection (1) for notice have been met.

1 A person may sign the certification only if the person
2 reasonably believes that the subsection of 50-16-535
3 identified in the certification provides an appropriate
4 basis for the use of discovery or compulsory process. Unless
5 otherwise ordered by the court, the health care provider
6 shall maintain a copy of the process and the written
7 certification as a permanent part of the patient's health
8 care information.

9 (3) In response to service of compulsory process or
10 discovery requests, a health care provider may deny access
11 to the requested health care information under 50-16-542(1).
12 If access to requested health care information is denied by
13 the health care provider under 50-16-542(1), the health care
14 provider shall submit to the court by affidavit or other
15 reasonable means an explanation of why the health care
16 provider believes the information should be protected from
17 disclosure.

18 (4) The court may order disclosure of health care
19 information, with or without restrictions as to its use, as
20 the court considers necessary. In deciding whether to order
21 disclosure, the court shall consider the explanation
22 submitted by the health care provider, the reasons for
23 denying access to health care information set forth in
24 50-16-542(1), and any arguments presented by interested
25 parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the health care provider's actual cost for providing the information, and may deny examination or copying of the information until the fee is paid.

~~(3)~~(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Section 6. Section 50-16-542, MCA, is amended to read:

"50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care information might disclose birth out of wedlock or provide information from which knowledge of birth out of wedlock might be obtained and which information is protected from disclosure pursuant to 50-15-206;

~~(e)~~(f) the health care provider obtained the information from a person other than the patient; or

~~(f)~~(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the

1 patient to examine or copy the disclosable information.

2 (4) If a health care provider denies a patient's
3 request for examination and copying, in whole or in part,
4 under subsection (1)(a) or (1)(c), he shall permit
5 examination and copying of the record by another health care
6 provider who is providing health care services to the
7 patient for the same condition as the health care provider
8 denying the request. The health care provider denying the
9 request shall inform the patient of the patient's right to
10 select another health care provider under this subsection."

11 NEW SECTION. **Section 7.** Extension of authority. Any
12 existing authority to make rules on the subject of the
13 provisions of [this act] is extended to the provisions of
14 [this act].

-End-

Conference Committee
on HOUSE BILL 621
Report No. 1, April 11, 1989

Page 1 of 1

Mr. Speaker:

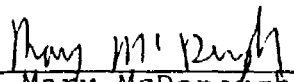
We, your Conference Committee on House Bill 621 met and considered: House Bill 621 (third reading -- blue copy) and amendments to House Bill 621 adopted by the Senate (pink sheet).

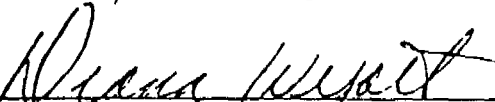
We recommend that House Bill 621 (reference copy -- salmon) be amended as follows:

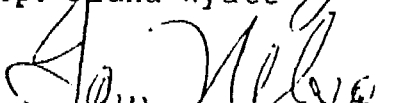
Adopt the Senate amendments to House Bill 621 in their entirety

And that this Conference Committee Report be adopted.

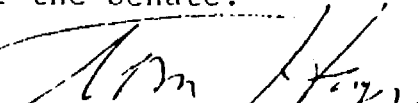
For the House:

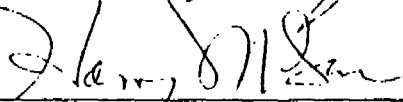

Rep. Mary McDonough, Chairman

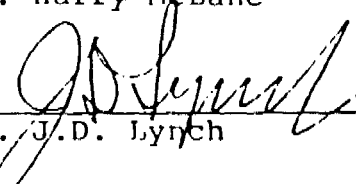

Rep. Diana Wyatt


Rep. Tom Nelson

For the Senate:


Sen. Tom Hager, Chairman


Sen. Harry McLane


Sen. J.D. Lynch

ADOPT
REJECT

HB 621
811423CC.HBV

being responsible for evaluation, it is the intention of this bill that when the money becomes available in two years, they want that money to become their responsibility rather than the states responsibility so there can be an incentive to do more evaluations locally, or at least closer to where the youth is. Rep. Mercer handed out for the Committee's review the Juvenile Jail Removal Initiative which explains in full the intent of the program (EXHIBIT 5).

DISPOSITION OF HOUSE BILL 568

Motion: A DO PASS motion was made by Rep. Gould, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved amendments dealing with the delayed effective date (EXHIBIT 4). He also addressed the issue that is raised on page 14, section 7 regarding the County Commissioners being responsible for the cost of evaluation. He requested that it also be a delayed effective date. Motion seconded by Rep. Aafedt.

Recommendation and Vote: Rep. Mercer motioned DO PASS AS AMENDED, seconded by Rep. Gould. A vote was taken and CARRIED unanimously.

HEARING ON HOUSE BILL 621

Presentation and Opening Statement by Sponsor:

Rep. Tom Nelson, House District 95 stated that HB 621 represents some technical amendments to the Uniform Health Care Information Act that was adopted by this legislature in 1987. The Act was adopted to protect the confidentiality of health care information while simultaneously providing the procedures necessary for an orderly and uniform process of disclosure. HB 621 addresses various provisions of the Uniform Health Care Information Act which have proven in practice to be unduly burdensome, restrictive, unnecessary and in some instances in potential conflict with the existing Montana law. The proposed amendments to the Uniform Health Care Information Act will remove some of the perceived problems in the application of the Act which have arisen in the last two years while continuing to preserve the confidentiality of health care information.

Testifying Proponents and Who They Represent:

Steve Browning, Montana Hospital Association
Larry Akey, Montana Health Network

Proponent Testimony:

Steve Browning presented before the Committee a written testimony voicing his support of HB 621 which reviewed thoroughly the six main sections of the bill in relation to the Uniform Health Care Information Act (EXHIBIT 6).

Larry Akey, representing the Montana Health Network as a group of 10 hospitals in Eastern Montana stood before the Committee in support of HB 621 and urged the Committee's favorable consideration.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Brown questioned Section 4, as to what kind of situation arises when a person would get an investigative subpoena in the hospital? Mr. Browning stated that it comes from the County Attorney's Office.

Closing by Sponsor: Rep. Nelson closed.

HEARING ON HOUSE BILL 592

Presentation and Opening Statement by Sponsor:

Rep. Jerry Driscoll, House District 92 stated that HB 592 was introduced at the request of the Firemans Union in Billings. This bill deals with people who are found guilty of arson and whether or not the city can recover their cost for fighting those fires.

Testifying Proponents and Who They Represent:

Tim Bergstrom, Montana State Firemans Association
Lonnie Larson, Billings Fire Department
Ray Blehm, State Fire Marshal
Lyle Nagel, Montana State Volunteer Firefighters Association
Edward Flies, Montana State Council of Professional Firefighters,
City of Helena Fire Department

Proponent Testimony:

Tim Bergstrom stated that HB 592 seeks to provide local government entities with a redress to recover their increasing cost associated with the suppression and investigation of arson fires. These arson fires create an extreme hazard to firefighters in that arsonists often employ sophisticated techniques in setting these fires. They might use explosives, large volumes of flammable liquids and sometimes they even create breeches in building construction to enhance the rapidness of which a fire is

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 15, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

TESTIMONY OF THE MONTANA HOSPITAL ASSOCIATION
IN SUPPORT OF HB 621
Amendments to the Uniform Health Care Information Act
Before the House Judiciary Committee
Wednesday, February 15, 1989

House Bill 621 addresses various provisions of the Uniform Health Care Information Act (hereinafter "Act") which have proven in practice to be unduly burdensome, restrictive, unnecessary, and in some instances, in potential conflict with existing Montana law. The testimony presented here will discuss the suggested amendments to the Act, the underlying rationale for the changes, and where necessary, the relationship of the amendments to existing law.

Section 1

As it currently reads, § 50-16-522, MCA, authorizes release of a deceased patient's health care records upon consent of the personal representative, or if none, "by persons who are authorized by law to act for him." As set forth in the comments to the Act, "this section recognizes the possibility of substantial harm or embarrassment to the family, estate, or reputation of the deceased patient by the release of health care information. Therefore, this Act gives representatives of deceased patients the authority to exercise all of the deceased patient's rights under the Act." However, under Montana law, there does not appear to be a person "authorized by law to act for the deceased patient," in the absence of a personal representative. The proposed amendment would identify a class of relatives who would be entitled to act in the decedent's place in the absence of such a representative.

Section 2

When Montana adopted the Act it amended certain portions, including that portion found at § 50-16-525(2), MCA. Strictly construed, this section requires that each time a physician (not an agent or employee of the provider) consults a hospital chart, a record of such consultation complying with the Act must be made. The current requirements are unduly burdensome and serve no useful purpose in protecting the confidentiality of health care information. By returning to the original language of the Act, a health care provider will still be required to maintain a record of those individuals granted access to a patient's recorded health care information. However, where such person is providing health care to the patient, § 50-16-529(1), MCA, or otherwise allowed access to such information pursuant to § 50-16-529(2), MCA, no record will be required.

Section 3

The proposed amendment will allow for the release of health care information to third party health care payors. Consent to the release of medical records, primarily to third party payors, are frequently signed by relatives. However, the Act itself does not provide for such authorization. To allow the release of a patient's health care record to third party payors will streamline the procedures for releasing such information to third party payors while not otherwise affecting the confidentiality rights of the patient.

Section 4

Section 50-16-535, MCA, identifies when health care information may be made available by use of compulsory legal process. Subsection 9 provides that such information may be released where "a court has determined that the particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest." This section fails to address whether health care information must be disclosed pursuant to an "investigative subpoena" issued in accordance with the requirements of § 46-4-301, MCA as there is an uncertainty as to whether investigative subpoenas constitute an "order of court". Additionally, investigative subpoenas do not include a finding that the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest. The suggested amendment to § 50-16-535, MCA, clarifies that health care information must be disclosed when requested pursuant to an investigative subpoena issued in accordance with the requirements of § 46-4-301, MCA.

Section 5

Section 50-16-542, MCA, provides that a health care provider may deny access to health care information requested by a patient under a number of specifically enumerated circumstances. This section does not authorize a refusal to produce health care information in response to compulsory process or discovery even though some of the reasons articulated in § 50-16-542, MCA, might suggest to the health care provider that such information should not be furnished. The proposed amendments to § 50-16-536, MCA, provide health care providers with the discretion to deny access to health care information requested by compulsory process or pursuant to discovery, for any of those reasons articulated in § 50-16-542, MCA. However, as the court retains control over compulsory legal process, it appears appropriate that the health care provider submit to the

court by affidavit or other reasonable means, an explanation as to why the health care provider believes the information should be protected from disclosure. The court may order disclosure, with whatever restrictions on use it deems necessary.

The addition of subsection (5) will allow the health care provider to recover its cost where disclosure is required by compulsory process.

Section 6

Section 50-15-206, MCA identifies the only circumstances in which health care information which might disclose illegitimacy of birth may be released. By amending the Act to provide that health care information which might disclose illegitimate birth may only be released in accordance with § 50-15-206, MCA, any question which has arisen as to whether records of illegitimate births must be released to the child, as a "written request from a patient to examine or copy all or part of his recorded health care information" pursuant to § 50-16-541 will be eliminated.

OHG/srg

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 621DATE FEB. 15, 1989SPONSOR TOM NELSON

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Steve Browning	Mt Hosp Assn	X	
Larry Alkey	Plt Health Network	X	
Terry Goodrock	mt. med Assn	amcd	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DISPOSITION OF HOUSE BILL 621

Motion: Rep. Wyatt moved HB 621 DO PASS, motion seconded by Rep. Knapp.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Wyatt motioned to adopt proposed amendments (EXHIBIT 22), motion seconded by Rep. Knapp.

A vote was taken on the amendment and CARRIED unanimously.

Recommendation and Vote: Rep. Wyatt moved HB 621 DO PASS AS AMENDED, motion seconded by Rep. Knapp. A vote was taken and CARRIED with a unanimous vote.

DISPOSITION OF HOUSE BILL 528

Motion: A DO PASS motion was made by Rep. Boharski, motion seconded by Rep. McDonough.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Boharski moved proposed amendments (EXHIBIT 23), motion seconded by Rep. McDonough.

Rep. Daily stated that what they are doing is raising insurance rates by 10 to 14% for judges who are the lowest paid in the U.S., for professors at the University of Montana who are the lowest paid professors in the U.S., as well as for state employees who haven't been given a raise for at least 2 years.

Recommendation and Vote: Rep. Daily made a substitute motion to TABLE HB 528, motion seconded by Rep. Eudaily. A vote was taken and CARRIED with Rep.'s Boharski, Addy, and Brown voting No.

Rep. Boharski moved to reconsider action taken on HB 528, motion seconded by Rep. Hannah. Motion FAILED with Rep.'s Gould, Hannah, and Boharski voting in favor of the motion.

DISPOSITION OF HOUSE BILL 291

Motion: A DO PASS motion was made by Rep. Addy, motion seconded by Rep. Hannah.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Hannah moved to amend page 2, line 4, strike "(a)". Page 2, delete lines 17-24. Motion seconded by Rep. Darko.

A vote was taken on the amendments and CARRIED unanimously.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 17, 1989

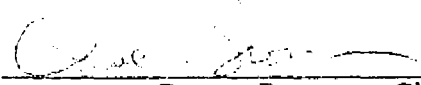
NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 621 (first reading copy -- white) do pass as amended .

Signed: 

Dave Brown, Chairman

And, that such amendment read:

1 Page 2, line 19.

Following: "~~provider or~~"

Insert: "including an agent or employee of the health care provider or"

Senator Himsl asked for a more detailed definition of out-of-home placement. Mr. Matthies stated out-of-home placement basically means foster care. The number of children in the adoption program is small compared to foster care.

Closing by Sponsor: Representative Brown stated that if the committee wished, she would ask Steve Waldron for additional fiscal information. She stated another example of the need for this Resolution was that at the Intermountain Deaconess Home in Helena over 20% of the children in care at the Deaconess come from adoptive families. They feel there is a need for more support services for adoptive families so that children are not taken out of adoptive families and put in group homes or institutions. The idea is to try to get all such information coordinated so that resources can be better utilized. She urged support of HJR 15.

DISPOSITION OF HOUSE JOINT RESOLUTION 15

Discussion: Senator Lynch suggested several amendments to HJR 15. After adoption of the amendments it was suggested that the bill be reviewed with the amendments inserted before the final vote is taken on HJR 15.

Amendments and Vote: Senator Lynch made a motion that on Line 7, the words "and implement" be stricken; on page 2, line 20, strike "July 1, 1991" and insert "January 1, 1991"; on Page 2, lines 22 through 24, following "placements." strike remainder of line 22 through "1993." Senator Lynch moved that the AMENDMENTS BE ADOPTED. Senators in favor, 6; opposed, 0.

Senator Lynch moved that lines 10 through 19 be stricken. MOTION WAS MADE THAT AMENDMENT BE ADOPTED. Senators in favor, 6; opposed, 0.

Recommendation and Vote: It was recommended that the bill be reviewed with the amendments included, and no further action be taken until Wednesday, March 22.

HEARING ON HOUSE BILL 621

Presentation and Opening Statement by Sponsor: Tom Nelson, Representative of House District #95, stated HB 621 is a bill that amends the Uniform Health Care Information Act and was presented to the House Judiciary Committee and was passed out to the House floor where it passed without any dissenting votes. The Uniform Health Care Information Act was adopted by the Legislature in 1987,

to protect the confidentiality of health care information while simultaneously providing the procedures necessary for an orderly and uniform process of disclosure. HB 621 addresses various provisions of the UHCI Act which have proven in practice to be unduly burdensome, restrictive and unnecessary and in some cases in potential conflict with existing Montana law. The proposed amendments to the UHCI Act will remove some of the perceived problems in the application of the act which have arisen in the past two years while continuing to preserve the confidentiality of health care information. The bill was requested by the Montana Hospital Association, according to Rep. Nelson, who also stated he supports the amendments.

List of Testifying Proponents and What Group they Represent:

Oliver Goe, Attorney, Montana Hospital Association
Larry Akey, Montana Health Network
William A. Vollmer, Department of Social and
Rehabilitation Services

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Oliver Goe stated he is appearing on behalf of the Montana Hospital Association. He presented copies of written testimony to the committee which discussed the suggested amendments to the Act, the underlying rationale for the changes, and where necessary, the relationship of the amendments to existing law. Attached to the testimony is a copy of the proposed amendments. He reviewed the various sections of the testimony for the committee (Exhibit #2).

Larry Akey, representing Montana Health Network, stated they support HB 621 with the amendments previously proposed.

William A. Vollmer, Bureau Chief of the Disability Determination Bureau of the SRS, stated that what they have run into over the past two years has been a non-response to requests for medical information where signed releases were not specifically made out to particular medical providers. He believes the amendments will help clarify to other agencies, ie State Compensation Insurance Fund, Board of Health, that all medical information is being sought, rather than just what is specified. He also requested an extension of the time limit from 8 months to one year.

He presented written testimony for the committee's study (Exhibit #3).

Questions From Committee Members: None

Closing by Sponsor: Representative Nelson said he believes the bill speaks for itself.

DISPOSITION OF HOUSE BILL 621

Discussion: Senator asked if the amendments meet the concerns of those present. Jim Ahrens of the Montana Hospital Association suggested the bill be passed as amended, and if a change is necessary, work it out on the floor.

Amendments and Votes: Senator Lynch moved that the AMENDMENTS BE ADOPTED. Senators in favor, 6; opposed, 0. AMENDMENTS ADOPTED.

Recommendation and Vote: Senator Lynch moved that HOUSE BILL 621 BE CONCURRED IN AS AMENDED. Senators in favor, 6; opposed, 0. MOTION PASSED UNANIMOUSLY.

Senator Hager will carry HB 621 to the floor of the Senate.

EXECUTIVE ACTION ON HOUSE BILL 197

Senator Hager called for action on House Bill 197: He stated that this bill would revise the procedure to the voluntary admission of minors to a mental health facility.

Discussion: Since the requested amendments were not furnished by the sponsor, it was decided to table HB 197.

Recommendation and Vote: Senator Pipinich MADE A MOTION THAT HB 197 BE TABLED. Senators in favor, 6; opposed, 0. MOTION PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON HOUSE BILL 102

Senator Hager called for action on House Bill 102: This bill revised the definition of "Community Comprehensive Mental Health Center" and permitted a regional mental health corporation board to set a fee schedule for mental health services if the department of institutions does not respond within a certain period to a request for a fee change.

Discussion: None

ROLL CALL

PUBLIC HEALTH

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3/20/88

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch	X		
Sen. Himsl	X		
Sen. Norman	X		
Sen. McLane			Excused
Sen. Pibinich	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 27, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration HB 621 (third reading copy -- blue), respectfully report that HB 621 be amended and as so amended be concurred in:

Sponsor: Nelson, T. (Hager)

1. Title, lines 13 and 14.

Strike: line 13 through "WEDLOCK" on line 14

Insert: "CLARIFY THAT INFORMATION THAT MIGHT DISCLOSE BIRTH OUT OF WEDLOCK IS TO BE DISCLOSED ONLY IN ACCORDANCE WITH SECTION 50-15-206, MCA"

2. Page 2, line 19.

Following: "~~provider or~~"

Insert: "except for"

3. Page 5, line 19.

Following: "process."

Insert: "(1)"

4. Page 5, line 23.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections

5. Page 7, line 4.

Following: line 3

Insert: "(2) Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law."

6. Page 7, line 8.

Strike: "(2), (4), or (5)"

Insert: "(1)(b), (1)(d), or (1)(e)"

7. Page 7, lines 9 and 10.

Strike: "(9) or (10)"

Insert: "(1)(i)"

8. Page 7, line 23.

Strike: "(2), (4), or (5)"

Insert: "(1)(b), (1)(d), or (1)(e)"

9. Page 7, lines 24 and 25.

Strike: "or investigation"

Following: "50-16-535"

Strike: "(9) or (10)"

Insert: "(1)(1)"

10. Page 8, line 10.

Following: "requests,"

Insert: "where authorized by law, a health care provider may deny access to the requested health care information. Additionally,"

11. Page 8, line 18.

Following: "(4)"

Strike: "The"

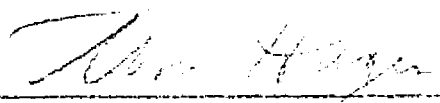
Insert: "Where access to health care is denied under 50-16-542(1), the"

12. Page 10, lines 4 and 5.

Strike: "A PERSON IS SEEKING UNDER 50-16-522 TO EXERCISE THE PATIENT'S RIGHTS AND"

AND AS AMENDED BE CONCURRED IN

Signed: _____


Thomas O. Hager, Chairman

TESTIMONY OF THE MONTANA HOSPITAL ASSOCIATION
IN SUPPORT OF HB 621

Amendments to the Uniform Health Care Information Act
Before the Senate Committee on Public Health, Welfare and Safety
Monday, March 20, 1989

House Bill 621 addresses various provisions of the Uniform Health Care Information Act (hereinafter "Act") which have proven in practice to be unduly burdensome, restrictive, unnecessary, and in some instances, in potential conflict with existing Montana law. The testimony presented here will discuss the suggested amendments to the Act, the underlying rationale for the changes, and where necessary, the relationship of the amendments to existing law.

Section 1

As it currently reads, § 50-16-522, MCA, authorizes release of a deceased patient's health care records upon consent of the personal representative, or if none, "by persons who are authorized by law to act for him." As set forth in the comments to the Act, "this section recognizes the possibility of substantial harm or embarrassment to the family, estate, or reputation of the deceased patient by the release of health care information. Therefore, this Act gives representatives of deceased patients the authority to exercise all of the deceased patient's rights under the Act." However, under Montana law, there does not appear to be a person "authorized by law to act for the deceased patient," in the absence of a personal representative. The proposed amendment would identify a class of relatives who would be entitled to act in the decedent's place in the absence of such a representative.

Section 2

When Montana adopted the Act it amended certain portions, including that portion found at § 50-16-525(2), MCA. Strictly construed, this section requires that each time a physician (not an agent or employee of the provider) consults a hospital chart, a record of such consultation complying with the Act must be made. The current requirements are unduly burdensome and serve no useful purpose in protecting the confidentiality of health care information. By returning to the original language of the Act, a health care provider will still be required to maintain a record of those individuals granted access to a patient's recorded health care information. However, where such person is providing

health care to the patient, § 50-16-529(1), MCA, or otherwise allowed access to such information pursuant to § 50-16-529(2), MCA, no record will be required.

Section 3

The proposed amendment will allow for the release of health care information to third party health care payors. Consent to the release of medical records, primarily to third party payors, are frequently signed by relatives. However, the Act itself does not provide for such authorization. To allow the release of a patient's health care record to third party payors will streamline the procedures for releasing such information to third party payors while not otherwise affecting the confidentiality rights of the patient.

Section 4

Section 50-16-535, MCA, identifies when health care information may be made available by use of compulsory legal process. Subsection 9 provides that such information may be released where "a court has determined that the particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest." This section fails to address whether health care information must be disclosed pursuant to an "investigative subpoena" issued in accordance with the requirements of § 46-4-301, MCA as there is an uncertainty as to whether investigative subpoenas constitute an "order of court". Additionally, investigative subpoenas do not include a finding that the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest. The suggested amendment to § 50-16-535, MCA, clarifies that health care information must be disclosed when requested pursuant to an investigative subpoena issued in accordance with the requirements of § 46-4-301, MCA.

The amendment also is intended to clarify that the confidentiality provisions enjoyed by professional utilization, peer review and professional standards review committees are not in any way encroached upon by the Uniform Health Care Information Act and that the records of such committees are protected from disclosure, whether requested by patient, through discovery or by compulsory process. Section 37-2-201(2) currently protects such documents from disclosure, stating "The proceedings and records of professional utilization, peer review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding."

Section 5

Section 50-16-542, MCA, provides that a health care provider may deny access to health care information requested by a patient under a number of specifically enumerated circumstances. This section does not authorize a refusal to produce health care information in response to compulsory process or discovery even though some of the reasons articulated in § 50-16-542, MCA, might suggest to the health care provider that such information should not be furnished. The proposed amendments to § 50-16-536, MCA, provide health care providers with the discretion to deny access to health care information requested by compulsory process or pursuant to discovery, for any of those reasons articulated in § 50-16-542, MCA. However, as the court retains control over compulsory legal process, it appears appropriate that the health care provider submit to the court by affidavit or other reasonable means, an explanation as to why the health care provider believes the information should be protected from disclosure. The court may order disclosure, with whatever restrictions on use it deems necessary.

The addition of subsection (5) will allow the health care provider to recover its cost where disclosure is required by compulsory process.

Section 6

Section 50-15-206, MCA identifies the only circumstances in which health care information which might disclose illegitimacy of birth may be released. By amending the Act to provide that health care information which might disclose illegitimate birth may only be released in accordance with § 50-15-206, MCA, any question which has arisen as to whether records of illegitimate births must be released to the child, as a "written request from a patient to examine or copy all or part of his recorded health care information" pursuant to § 50-16-541 will be eliminated.

OHG/srg

William A. Vollmer, Chief
Disability Determination Bureau

Testimony HB621

SENATE HEALTH & WELFARE
EXHIBIT NO. #3
DATE 3/20/89
BILL NO. HB #621

The Montana Department of Social and Rehabilitation Services administers several programs relying on medical evidence to adjudicate individual claims possibly resulting in benefit payments. These disability programs are:

- 1) Social Security Disability Insurance - SSDI
- 2) Supplemental Security Income - SSI
- 3) Medically Needy related to Medicaid only

The adjudicative process involves securing from claimants signed medical releases directed to physicians, hospitals, insurance companies, clinics, Veterans Administration, Indian Health Service, Workers Compensation, County Welfare Offices, etc., or wherever there is medical evidence that would assist the Agency in making the disability decision resulting in benefit payments and attendant services such as Medicare and Medicaid coverage.

The new law has created a major complication in the way other state agencies who are sources of medical evidence respond to the Disability Determination Bureau (DDB) requests.

For example, some claimants are receiving Workers Compensation (W/C). In order to secure disability related information from W/C each treatment source must be specified on each medical release. Since the W/C now retains only medical records on claimants insured by the State Compensation Insurance Fund (SCIF) we have no way of knowing what other Workers Compensation insurance companies ~~may~~ have medical evidence that would assist in the adjudication of a disability claim if it's a different W/C plan. The end result is more development costs associated with having to re-contact claimants and paying records or special report fees to additional sources.

The second issue is the length of time required for a claimant to exhaust the administrative remedies in the event the disability claim is denied and subsequently appealed. There are 3 additional levels before a disability claim reaches Federal or State District Court. The six month period for the life of the release is much too short. The majority of appeals through the 3rd level take a minimum of 8 months. One year is a more realistic time frame.

The proposed amendment provides the authority for State Agencies to respond to specific program requests in a manner that will facilitate adjudication both from a time and cost standpoint.

From a time standpoint the requesting Agency will need only one signed release for all medical information from the specified Agency. There will no longer be the need for multiple contacts with the claimant to secure multiple releases when new sources are identified such as insurance carriers. If there are associated costs the requesting Agency will be paying for records costs once.

Amendments to House Bill No. 621
Third Reading Copy

For the Senate Public Health, Welfare and Safety Committee

Prepared by Tom Gomez, Staff Researcher
March 21, 1989

1. Title, lines 13 and 14.

Strike: line 13 through "WEDLOCK" on line 14

Insert: "CLARIFY THAT INFORMATION THAT MIGHT DISCLOSE BIRTH OUT
OF WEDLOCK IS TO BE DISCLOSED ONLY IN ACCORDANCE WITH SECTION
50-15-206, MCA"

2. Page 2, line 19.

Following: "~~provider or~~"

Insert: "except for"

3. Page 5, line 19.

Following: "process."

Insert: "(1)"

4. Page 5, line 23.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections

5. Page 7, line 4.

Following: line 3

Insert: "(2) Nothing in this part authorizes the disclosure of
health care information by compulsory legal process or discovery
in any judicial, legislative, or administrative proceeding where
disclosure is otherwise prohibited by law."

6. Page 7, line 8.

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Insert: "(1)(b), (1)(d), or (1)(e)"

7. Page 7, lines 9 and 10.

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Insert: "(1)(i)"

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Strike: "(2), (4), or (5)"

Insert: "(1)(b), (1)(d), or (1)(e)"

9. Page 7, lines 24 and 25.

Strike: "or investigation"

Following: "under"

Strike: "(9) or (10)"

Insert: "(1)(i)"

10. Page 8, line 10.

Following: "requests,"

Insert: "where authorized by law, a health care provider may deny access to the requested health care information. Additionally,"

11. Page 8, line 18.

Following: "(4)"

Strike: "The"

Insert: "Where access to health care is denied under 50-16-542(1), the"

12. Page 10, lines 4 and 5.

Strike: "A PERSON IS SEEKING UNDER 50-16-522 TO EXERCISE THE PATIENT'S RIGHTS AND"

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 3/20/89 Bill No. HB 621 Time 1:45

NAME	YES	NO
Sen. Tom Hager	X	
Sen. Tom Rasmussen	X	
Sen. Lynch	X	
Sen. Matt Himsl	X	
Sen. Bill Norman	X	
Sen. Harry McLane	-	
Sen. Bob Pipinich	X	

Dorothy Quinn
Secretary

Sen. Tom Hager
Chairman

Motion: (Lynch - 2 opposed 6, opposed

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 3/20/89 Bill No. 621 Time

NAME	YES	NO
Sen. Tom Hager	X	
Sen. Tom Rasmussen	X	
Sen. Lynch	X	
Sen. Matt Himsl	X	
Sen. Bill Norman	X	
Sen. Harry McLane	—	
Sen. Bob Pipinich	X	

Dorothy Quinn
Secretary

Sen. Tom Hager
Chairman

Motion: Sen. Lynch — 3 (Carry)
9 — 0
In Favor

Sen Hager will carry